EXPLANATORY MEMORANDUM TO

THE DOMESTIC ABUSE PROTECTION ORDERS (COUNTY COURT: RELEVANT PROCEEDINGS) REGULATIONS 2024

2024 No. 253

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lord Bellamy KC, Parliamentary Under Secretary of State at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Alex Davis, Deputy Director for Rape, Serious Sexual Offences and Domestic Abuse Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sarah Roskrow at the Ministry of Justice Telephone: 07926066264 or email: sarah.roskrow@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Section 31(7) of the Domestic Abuse Act 2021 ("the DA Act") provides that the county court may make a domestic abuse protection order ("DAPO") against a person in any relevant proceedings to which that person and the person for whose protection the order would be made are parties. This instrument specifies descriptions of proceedings which are to be "relevant proceedings" for these purposes, so that the county court will be able to make DAPOs in such proceedings.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is England and Wales.

4.3 The territorial application of this instrument is England and Wales.

5. Policy Context

What is being done and why?

5.1 Part 3 of the DA Act makes provision for DAPOs. DAPOs bring together the strongest elements of current protective orders into a new, more comprehensive order, which can be tailored to better protect victims of domestic abuse and help address perpetrator behaviour.

5.2 DAPOs will be available through a variety of routes in family, civil and criminal courts. This instrument is concerned solely with the county court. Under section 31(7)

and 31(8) of the DA Act, the county court has the power to make a DAPO of its own volition in any relevant civil proceedings to which both the respondent and the person to be protected by the DAPO are parties "Relevant proceedings" are those proceedings which are specified in regulations made by the Secretary of State. These proceedings do not have to be domestic abuse related. The respondent and the person to be protected must be "personally connected" within the meaning of section 2 of the DA Act, which includes current and former spouses, civil partners, other intimate partners and certain other categories of relatives. The intention is to enable the county court to make a DAPO during ongoing civil proceedings where, during such proceedings, the court becomes aware of the need to protect a party from domestic abuse or the risk of domestic abuse by another party.

5.3 In addition, under section 28(7) of the DA Act, a victim can apply for a DAPO in any civil proceedings where both the respondent and the victim are parties to the same proceedings and the court would have power to make a DAPO of its own volition – which is to say, for the county court, the proceedings are "relevant proceedings" as outlined above.

5.4 Both section 28(7) and section 31(7) rely on the Secretary of State having exercised the power to specify proceedings which are "relevant proceedings", without which the county court will have no power to make a DAPO. This instrument accordingly specifies those "relevant proceedings"; and it does so by specifying a wide range of proceedings with a view to capturing the types of proceedings where domestic abuse between the parties is most likely to be alleged or revealed in evidence.

What was the previous policy, how is this different?

5.5 The county court's powers to make orders specifically for the protection of victims of domestic abuse are limited – it has no power to make non-molestation orders or occupation orders, for example. Enabling the county court to make DAPOs in relevant proceedings before it will accordingly plug a gap in possibilities for protection.

6. Legislative and Legal Context

How has the law changed?

6.1 These regulations specify types of civil proceedings during the course of which the county court can make a DAPO. In doing this, they underpin the change in the law making it possible for the county court to make DAPOs, where before the county court would have been unable to make any of the specific domestic abuse-related protective orders such as non-molestation orders. The county court was restricted to other orders of more limited scope and utility in protecting against domestic abuse such as orders under the Protection from Harassment Act 1997.

Why was this approach taken to change the law?

6.2 The approach taken seeks to balance correction of the county court's inability to make domestic abuse-specific orders with avoiding irrelevant considerations in proceedings where domestic abuse issues are very unlikely to arise. Given the wide range of civil proceedings in the county court, section 31(7) of the DA Act limits the county court's power to make a DAPO to "relevant proceedings", which is defined by section 31(8) as proceedings specified in regulations by the Secretary of State. These regulations specify such relevant proceedings. The intention is to specify the types of civil proceedings where domestic abuse between parties is most likely to be alleged or revealed in evidence. Parties will need to be "personally connected" as defined under section 2 of the DA Act, which includes current and former partners and certain

relatives. Given the pervasive nature of domestic abuse, the list of specified proceedings is drawn quite widely.

6.3 If no proceedings are specified, civil courts would not have the power to make a DAPO at all. Therefore, these regulations are necessary to underpin the operation of Part 3 of the DA Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation was undertaken on these regulations, although they were considered by a cross-jurisdictional working group set up to develop procedure for DAPO proceedings, and by the Civil Procedure Rule Committee, which noted the comprehensiveness of the list of relevant proceedings.

7.2 DAPOs, as one of the measures in the DA Act, were the subject of a public consultation in 2018. The consultation, response and Impact Assessment are available on the GOV.UK website[1].

8. Applicable Guidance

8.1 No specific guidance is being prepared. Judiciary and staff in civil courts will be provided with information about these regulations. A pilot practice direction for use in civil courts will also be published. The Home Office will be providing statutory guidance on DAPNs and DAPOs to the police, under section 50 of the DA Act.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment (IA) has not been prepared for this instrument because a separate IA has been published for all the provisions of the DA Act, including Part 3 which makes provision for DAPNs and DAPOs. Copies of the IA can be obtained from the Ministry of Justice, 102 Petty France, London, SW1H 9AJ, or from the GOV.UK website[2].

Impact on businesses, charities and voluntary bodies

9.2 Beyond that, there is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact of DAPO on the wider public sector is set out in the DA Act's IA. This instrument provides for procedural changes that would most impact HMCTS. The IA sets out the impact on each agency including HMCTS, LAA, HMPPS, CPS and the police relating to process changes associated with the DAPO and scope widening. Pages 20-31 of the IA set out the associated monetised and non-monetised costs and benefits of DAPOs and net quantifiable impacts.

[1] https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007463/DA_Act_2021_Impact_Assessment.pdf

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 These regulations will be reviewed as part of the piloting of those provisions.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State at the Ministry of Justice has made the following statement regarding Human Rights:

"In my view the provisions of The Domestic Abuse Protection Orders (County Court: Relevant Proceedings) Regulations 2024 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").